

**DOCUMENT RESUME**

**G2046 - [A1052033]**

**[Protest of the Award of a Contract for the Procurement of Economic Studies in Support of the Aviation Act of 1975].  
B-187817. April 12, 1977. 6 pp.**

**Decision re: Systems Analysis and Research Corp.; by Robert P. Keller, Deputy Comptroller General.**

**Issue Area: Federal Procurement of Goods and Services:  
Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1904).**

**Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: General Government: Other General Government (806).**

**Organization Concerned: Department of Transportation.**

**Authority: Aviation Act of 1975. 54 Comp. Gen. 614-5. 54 Comp. Gen. 612. 54 Comp. Gen. 775. 54 Comp. Gen. 783. 55 Comp. Gen. 60. B-181148 (1974). B-187397 (1977). E-180795 (1974). B-182558 (1975). E-181539 (1974). B-178220 (1973). B-176283 (1) (1973). B-173638 (1971).**

**A protest was made to a contract award for research related to Federal economic regulation of air transportation. The protest was based on the weight placed on evaluation criteria, the determination of technical acceptability, and the agency's failure to notify unsuccessful bidders. The protest was denied because it was untimely. The issuing agency has the authority to determine technical acceptability, and failure to notify unsuccessful bidders did not affect award validity. (SS)**

Louis Kozlakowski  
Proc. I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE: B-187817**

**DATE: April 12, 1977**

**MATTER OF: System Analysis and Research Corporation**

**DIGEST:**

1. Protest against weight which evaluation criteria placed on experience in deregulated studies is untimely since not filed prior to closing date for receipt of initial proposals.
2. Determination of technical acceptability is within discretion of procuring agency and will not be disturbed absent clear showing that determination was unreasonable. Protester's contention that technical evaluation was unreasonable because sufficient consideration was not given to its experience is not supported where record shows relevant experience was considered.
3. Failure to provide notice after award to unsuccessful offerors that their proposals were unacceptable is procedural deficiency which does not affect validity of award.

Systems Analysis and Research Corporation (SARC) protests the award of a contract by the Department of Transportation (DOT) under request for proposals (RFP) No. DOT-OST-047. The solicitation was for the Procurement of Economic Studies in support of the Aviation Act of 1975.

SARC has protested the award on the bases that:

- (1) The cost of SARC's sample task order was substantially lower than that of the successful offeror, Simat, Helliesen and Eichner, Inc. (SH&E).
- (2) That SARC proposal was not properly evaluated.
- (3) DOT failed to notify SARC of award and of the technical unacceptability of its proposal.
- (4) SH&E had been assigned work under the Basic Ordering Agreement prior to its award.

The RFP listed 10 evaluation factors in descending order of relative importance with cost listed last. The factors were as follows:

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- "1. Recent past experience in research related to the impact of such proposals to reduce Federal economic regulation of air transportation as S. 2551, S. 3364, H.R. 10261, H.R. 12484 and H.R. 12485.
- "2. Experience in performing analysis of the domestic air transportation system under alternative regulatory policies.
- "3. Understanding of the requirement and objectives of the proposal.
- "4. Demonstrated ability to use the CAB O&D surveys and service segment data, including ability to develop computerized analyses of this data.
- "5. Demonstrated ability to prepare economic analyses of domestic air carriers, traffic forecasts, individual city-pair route analyses, and estimated fare and service levels under various conditions.
- "6. The resumes of professional talent proposed to be available to work on individual tasks, including past experience as hearing witnesses in relevant aviation regulatory proceedings at the Federal and State level.
- "7. Availability of staff resources with current expertise in air transportation economic research and analysis.
- "8. Practical experience in working with Federal and State regulated air carriers and State and local aviation officials.
- "9. Experience in working with aircraft manufacturers.
- "10. Cost."

The SARC proposal was determined to be technically unacceptable and, therefore, eliminated from the competitive range. All proposals were independently evaluated by each member of a four-man panel in accordance with the evaluation criteria set forth in the RFP.

The summary by the evaluation team of SARC's proposal is as follows:

"SARC has sufficient experience in terms of the traditional regulatory environment. However, they have little experience with analysis of deregulated environments, which is key to the research to be undertaken in this contract. Their technical proposal evidences a weak understanding of DOT's requirements under the RFP. The one study cited by SARC as background in this area was, in the opinion of the evaluators, poorly done."

The procurement concerns an "analysis of a deregulated environment," and requires research related to the impact of proposals for legislation reducing Federal economic regulation of air transportation. Further, DOT states:

"The preparation of materials for CAB route cases is not irrelevant to this solicitation, and the cases cited by SARC indicate that SARC may have adequate experience for the purposes of this solicitation in that area. SARC, however, has cited little or no work relating to and showing acquaintance and experience with the potential system consequences of an altered regulatory environment."

SARC's primary disagreement with the evaluation of its proposal relates to DOT's failure to accord sufficient weight to its past experience. In this connection, SARC contends that within the industry and Government only DOT has espoused a theory that there is any difference in knowledge applied to regulated and deregulated industry studies.

In this regard, the two major evaluation criteria (criteria 1 and 2) set forth in the RFP clearly indicated the importance of an offeror's experience in research related to the impact of proposals to reduce Federal regulation of air transportation and experience in the analysis of the domestic air transportation system under alternative regulatory policies. SARC did not protest the weight of such related experience until after award. Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1976), requires protest, based upon improprieties which are apparent prior to the closing date for receipt of initial proposals, be filed prior to such closing date to be timely. Insofar as SARC's protest is against the use of such evaluation criteria it is untimely.

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While SARC alleges that many of its studies involved effects of various changes in the level of competition, service patterns, fares, etc., the technical evaluation is made on the basis of the proposal submitted as it relates to the criteria stated in the RFP. Phelps Protective System, Inc., B-181148, November 7, 1974, 74-2 CPD 244. DOT considered only SARC's critique of a DOT study and testimony done for a client as experience related to criteria 1 and 2, and reports the following:

"Criterion 1 - On pages 6 and 7 of its technical proposal, SARC referred to a critique of a DOT study and testimony done for a client. This reference appeared to be the only cited SARC experience specifically related to this criterion.

Several of the evaluators were familiar with a critique of a study prepared for DOT entitled 'Service to Small Communities.' The critique was presented as a part of the Association of Local Transport Airlines' congressional testimony on Administration legislation. It was the evaluators' view that the critique referenced by SARC pertained to the ALTA testimony which, in the professional opinion of the evaluators, was poorly done.

"Criterion 2 - SARC cited no work other than that described above which indicated experience in the analysis of the domestic air transportation system under alternative regulatory policies."

With regard to the evaluation of proposals, we stated in Systems Analysis and Research Corporation, B-187397, February 4, 1977, 77-1 CPD 90:

"It is not our function to evaluate proposals in order to determine which should have been selected for award. TGI Construction Corporation, et al., 54 Comp. Gen. 775 (1975), 75-1 CPD 167; Techplan

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Corporation, B-180795, September 16, 1974, 74-2 CPD 169; Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175. The overall determination of the relative merits of proposals is the responsibility of the contracting agency, since it must bear the major burden for any difficulties incurred by reason of a defective evaluation. Training Corporation of America, B-181539, December 13, 1974, 74-2 CPD 337. Accordingly, we have consistently held that procuring officials enjoy 'a reasonable range of discretion in the evaluation of proposals and in the determination of which offer or proposal is to be accepted for award,' and that such determinations are entitled to great weight and must not be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35; METIS Corporation, 54 Comp. Gen. 612, 614-5 (1975), 75-1 CPD 44; Riggins & Williamson Machine Company, Inc., 54 Comp. Gen. 783 (1975), 75-1 CPD 168; B-178220, December 10, 1973."

As stated previously, all proposals were evaluated in accordance with the evaluation criteria set forth in the RFP. Based on the record before our Office, we cannot conclude that DOT's determination was arbitrary. Further, where, as here, a proposal has been found to be so technically inferior that meaningful negotiations are precluded, it may be eliminated from the competitive range without regard to low cost. System: Analysis and Research, Inc., supra.

While DOT failed to notify SARC and the other offerors of their technical unacceptability and to give notice of the award, we have held that postaward notice to unsuccessful offerors is a procedural requirement and does not affect the validity of a contract award. B-176283(1), February 5, 1973; see B-173638, October 26, 1971. DOT states that it intended to provide a combined notice of unacceptability and award as permitted by DOT PR 12-3.5009-3 and Federal Procurement Regulations § 1-3.103(b) (1964 ed.), but inadvertently failed to issue such notice.

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Finally, SARC alleges that SH&E had been assigned work under the Basic Ordering Agreement prior to the award as the report of SH&E is dated May 5, 1976. In this connection DOT states:

"\* \* \* The project draft report referred to was prepared under contract DOT-OS-60155, which was awarded December 30, 1975. Task Order No. 3 under DOT-OS-60501, awarded September 29, 1976, required the contractor to update the Volume I draft of the study prepared under DOT-OS-60155."

For the reasons stated above, the protest is denied.

  
Deputy Comptroller General  
of the United States